



DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2018-0334]

Hours of Service of Drivers: National Cattlemen's Beef Association; Livestock Marketing Association; American Farm Bureau Federation; American Beekeeping Federation; American Honey Producers Association; and National Aquaculture Association; Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; denial of application for exemption.

SUMMARY: FMCSA announces its decision to deny the joint application from the National Cattlemen's Beef Association, Livestock Marketing Association, American Farm Bureau Federation, American Beekeeping Federation, American Honey Producers Association and National Aquaculture Association for an exemption from certain provisions in the hours-of-service (HOS) rules. The requested exemption was made on behalf of drivers who transport livestock, insects, and aquatic animals. The applicants requested approval for drivers, after 10 consecutive hours off duty, to drive through the 16th consecutive hour after coming on duty, and to drive a total of 15 hours during that 16-hour period. FMCSA analyzed the application and public comments and has determined that the exemption would not achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

DATES: FMCSA denied the application for exemption on [INSERT DATE OF PUBLICATION OF NOTICE IN THE FEDERAL REGISTER.]

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA-2018-0334 by any of the following methods:

- **Federal eRulemaking Portal:** www.regulations.gov. See the **Public Participation and Request for Comments** section below for further information.
- **Mail:** Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- **Hand Delivery or Courier:** West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- **Fax:** (202) 493-2251.

Each submission must include the Agency name and the docket number (FMCSA-2018-0334) for this notice. Note that DOT posts all comments received without change to www.regulations.gov, including any personal information included in a comment. Please see the **Privacy** heading below.

Docket: For access to the docket to read background documents or comments, go to www.regulations.gov at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

Privacy: In accordance with 49 U.S.C. 31315(b), DOT solicits comments from the public to better inform its exemption process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice DOT/ALL 14 – FDMS, which can be reviewed at <https://www.transportation.gov/privacy>.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards,

FMCSA, at (202) 366-2722 or by e-mail at richard.clemente@dot.gov. If you have questions on viewing or submitting material to the docket, contact Dockets Operations at (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2018-0334), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to www.regulations.gov and put the docket number (“FMCSA-2018-0334”) in the “Keyword” box, and click “Search.” When the new screen appears, click on the “Comment” button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The Agency must publish its decision in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption and the regulatory provision from which the exemption is granted. The notice must specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Request for Exemption

The National Cattlemen's Beef Association, Livestock Marketing Association, American Farm Bureau Federation, American Beekeeping Federation, American Honey Producers Association and National Aquaculture Association (applicants) submitted a joint exemption application from 49 CFR 395.3(a)(2) and (a)(3). The exemption would allow covered drivers, after taking 10 consecutive hours off duty, to drive through the 16th consecutive hour after coming on duty, and to drive a total of 15 hours during that 16-hour period. They note that livestock haulers are currently permitted to operate in "an exempt zone within a radius of 150 air miles" of the source of an agricultural commodity (49 CFR 395.1(k)(1)). FMCSA's published regulatory guidance provides that time spent working within the 150 air-mile radius does not count toward the driver's daily and

weekly HOS limits (83 FR 26374). Accordingly, the 15- and 16-hour limits requested by the applicants would begin after a livestock hauler travels outside the 150 air-mile radius. The requested exemption would apply to all livestock, insect, and aquatic animal transporters and their drivers.

The applicants state that the maximum driving and on-duty limits of the HOS regulations as applied to their operations may place the well-being of livestock at risk during transport and impose significant burdens on livestock haulers, particularly in rural communities across the country. They advise that their drivers would comply with all other HOS rules, including the 60/70-hour limits.

The applicants add that while most of their trips fall within the current HOS limits, some of the longer trips cannot be completed under the 11- and 14-hour rules. These trips are affected by “immutable factors” such as weather. In the cattle industry, the locations of cow-calf operations, grazing lands, feedlots, and processing facilities determine how far a livestock hauler must travel in a single trip. Livestock haulers transport animals from farms and ranches to auction markets, where the stock is sold. Once sold, the animals are often transported to grazing lands and feed yards, mostly located in the Central Plains and Southwest. After grazing and feeding, livestock are transported a final time to processing facilities, where they are transformed into consumable meat and sold. In addition, transportation of bees necessary to pollinate numerous crops, tree nuts, fruits, and vegetables requires some of the longest trips in the country. The applicants estimate that 25-30 percent of livestock-hauling trips would be conducted under the requested exemption.

The applicants suggest they could achieve a level of safety equivalent to or greater than the level of safety that would be obtained without the exemption by adopting fatigue risk management systems. The applicants describe a fatigue management system for livestock haulers developed in Australia. Specifically, the applicants propose:

participating in training to be developed by the livestock industry, in consultation with FMCSA, that addresses fatigue countermeasures; adopting fatigue risk management practices including completing a safe driving plan before each trip and completing a fitness for duty assessment before each trip; and adopting company practices to support fatigue risk management, including internal audits. The applicants included with their petition an appendix including 54 supporting documents.

A copy of the application for exemption and appendices is available for review in the docket for this notice.

IV. Public Comments

On February 6, 2019, FMCSA published notice of this application and requested public comment (84 FR 2304). The Agency received 359 total sets of comments, 43 opposed to the request. The following five organizations opposed the exemption: the National Transportation Safety Board (NTSB); Commercial Vehicle Safety Alliance (CVSA); Truckload Carriers Association (TCA); Iowa Motor Truck Association (IMTA); and the Animal Welfare Institute.

IMTA commented that livestock haulers should be held to the same HOS standards as the rest of the industry. If these loads require the truck to keep moving due to the live animals on the truck or trailer, and the run can't be completed within the normal 11 hours of driving, then the carrier should be required to put a team of two drivers into the vehicle. That would enable them to get the load delivered, while remaining in compliance with the standard HOS regulations. IMTA further added that livestock haulers are already exempt from HOS under the agricultural exemption when running within a 150-mile radius and from the requirement to operate electronic logging devices (ELDs).

TCA raised a similar objection regarding the 150 air-mile radius-from-the-source exemption for livestock haulers, adding that this requested exemption would add

significant driving and on-duty time to a driver's trip, as the "HOS clock" does not start until they drive outside of the exempt zone.

CVSA added that it opposes this exemption request, as it is both unjustified and impractical. According to CVSA, exemptions from federal safety regulations, first and foremost, have the potential to undermine safety, while also complicating the enforcement process. For these reasons, and to protect the safety of these truck drivers and the general motoring public, CVSA requested the Agency to deny the petition.

NTSB added that although the applicants propose implementing a fatigue risk management system to provide an adequate level of safety in lieu of the standard HOS requirements, FMCSA does not have a means to track, evaluate, or validate the effectiveness of such a system. NTSB said that FMCSA should therefore deny the requested exemption, and any similar exemption.

Two hundred ninety-four comments were filed in support of the request. Fifty-two were filed by State trucking associations related to livestock and cattlemen, including comments from all the original applicants. The remainder of the supporting comments were from individuals and trucking companies, primarily those hauling livestock. The supporters of the exemption reiterated the scenario provided in the application and supported four additional hours of drive time to facilitate longer hauls that are necessitated by the distances between where cattle are born, fed, and harvested. The supporters referenced industry guidelines that direct drivers to avoid stops while hauling livestock, especially in warmer weather, as the trailers are designed to cool the animals while in motion. According to many who supported the request, the majority of livestock cannot withstand the stress of 10 hours stopped without airflow or the added time on the trailer necessitated by such an extended rest. Sixteen commenters took no position either for or against the exemption request, and 6 others asked that livestock carriers be exempted from the ELD regulations.

V. FMCSA Safety Analysis and Decision

FMCSA evaluated the joint application and public comments and denies the exemption request. Research studies demonstrate that long work hours reduce sleep and harm driver health, and that crash risk increases with work hours. The HOS regulations impose limits on when and how long an individual may drive, to ensure that drivers stay awake and alert, and to reduce the possibility of cumulative fatigue. As stated by opponents of the exemption, livestock haulers have been required to operate within the confines of the HOS regulations for over 80 years.

Livestock haulers are entirely exempt from all HOS regulations under the agricultural commodities exemption in 49 CFR 395.1(k)(1), which covers a 150 air-mile radius from the source of the agricultural commodities. In addition, Section 23018 of the Bipartisan Infrastructure Law, Public Law 117-58, 135 Stat. 429, Nov. 15, 2021, enacted after applicants filed their exemption request, now provides that drivers transporting livestock are also exempt from all HOS regulations within a 150 air-mile radius from the final destination of the livestock. Livestock haulers remain exempt from the requirement to use ELDs.

If the Agency were to grant the exemption, drivers transporting agricultural commodities would be allowed six or more hours of driving time within the 150 air-mile exempt zones for the transportation of agricultural commodities, in addition to the 15 hours of driving time outside the zone. The Agency finds that allowing 21 or more hours of driving during a work shift would not likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent the exemption.

Although the applicants suggest that they could adopt a fatigue risk management system to ensure safety, fatigue risk management systems must be scientifically validated. FMCSA has promoted the voluntary adoption of fatigue management programs, including the North American Fatigue Management Program. Those voluntary fatigue management measures do not replace the safety benefits of compliance with the HOS regulations.

For these reasons, and to protect the safety of these truck drivers and the public, the FMCSA denies the request for exemption.

Robin Hutcheson,
Administrator.

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